

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 17th day of August, two thousand and six.

PRESENT:

HON. JON O. NEWMAN
HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
Circuit Judges.

Dian Chun Ke,
_____*Petitioner,*

-v.-

No. 05-6713-ag
NAC

Board of Immigration Appeals,
Respondent.

FOR PETITIONER: Henry Zhang, New York, New York.

FOR RESPONDENT: Dunn Lampton, United States Attorney for the Southern District of Mississippi, Edward O. Pearson, Assistant United States Attorney, Jackson, Mississippi.

UPON DUE CONSIDERATION of this petition for review from the Board of Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the

1 petition for review is DENIED.

2 Dian Chun Ke, a citizen of China, petitions for review of the BIA's affirmance of
3 Immigration Judge ("IJ") Sarah M. Burr's denial of his claims for asylum, withholding of
4 removal and relief under the Convention Against Torture ("CAT"). We assume the parties'
5 familiarity with the underlying facts and procedural history of the case.

6 When the BIA summarily affirms the decision of the IJ without issuing an opinion, *see* 8
7 C.F.R. § 1003.1(e)(4), this Court reviews the IJ's decision as the final agency determination. *See,*
8 *e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S. Dep't of Justice*, 362
9 F.3d 155, 158 (2d Cir. 2004). This Court reviews the agency's factual findings, including
10 adverse credibility determinations, under the substantial evidence standard. 8 U.S.C. §
11 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004).

12 In this case, the IJ found that Ke's credibility was undermined when he filed a false claim
13 for asylum. The IJ also determined that Ke was unable to rehabilitate his credibility. The IJ
14 noted that at the asylum interview, Ke was asked if he had any other problems in China that were
15 not related to his Christian religion and he responded "no." However, Ke claimed in his
16 supplemental asylum application and in his testimony at the asylum hearing that he feared that he
17 or his wife would be sterilized if he returned to China. The IJ further noted that Ke entered the
18 United States three separate times after his wife's allegedly forced abortion, but did not seek
19 asylum. The IJ determined that Ke's explanation for not seeking asylum, that his first child had
20 not yet been born, did not make sense. Ke argues that his explanation for not having applied for
21 asylum sooner was not explored further by the IJ. Ke claims that the IJ was under a duty to
22 confront him with the potential inconsistency to permit him an opportunity to clarify his

1 testimony. Where an inconsistency is dramatic, the agency may rely on it without first soliciting
2 an explanation from the applicant. *See Majidi v. Gonzales*, 430 F.3d 77, 81 (2d Cir. 2005). The
3 IJ's findings were reasonable and supported by substantial evidence in the record.

4 Ke argues that he has a well-founded fear of future persecution and that the Country
5 Condition Reports show that China's family planning policy is still in effect. In her denial of
6 Ke's claim, the IJ found that having one child in China does not constitute a reasonable future
7 fear of persecution. The IJ's finding is reasonable, as there is no evidence in the record, aside
8 from Ke's bare statement, to support his assertion that if he returns to China, there is a reasonable
9 possibility that he or his wife will be sterilized.

10 The IJ's adverse credibility determination and finding that no objective evidence of
11 future persecution exists necessarily precludes Ke's withholding of removal and CAT claims. *See*
12 *Paul v. Gonzalez*, 444 F.3d 148, 154 (2d Cir. 2006).

13 For the foregoing reasons, the petition for review is DENIED. The pending motion for a
14 stay of removal in this petition is DENIED as moot. Any pending request for oral argument in
15 this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and
16 Second Circuit Local Rule 34(d)(1).

17 FOR THE COURT:
18 Roseann B. MacKechnie, Clerk

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20 By: _____
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